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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No.: 200303-0070]

RIN 0648-BJ40

**Fisheries of the Exclusive Economic Zone off Alaska; Adjust the North Pacific
Observer Program Fee**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to adjust the North Pacific Observer Program fee. This proposed rule is intended to increase funds available to support observer and EM deployment in the partial coverage category of the Observer Program and increase the likelihood of meeting desired monitoring objectives. This proposed rule is intended to promote the goals and objectives of the IFQ Program, the Magnuson-Stevens Fishery Conservation and Management Act, the Northern Pacific Halibut Act of 1982, and other applicable law.

DATES: Submit comments on or before *[insert date 30 days after date of publication in the **FEDERAL REGISTER**]*.

ADDRESSES: You may submit comments, identified by docket number NOAA-NMFS-2019-0136, either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0136, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Records Office. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Electronic copies of the Environmental Assessment/Regulatory Impact Review (referred to as the “Analysis”) prepared for this proposed rule are available from <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Alicia M Miller, 907-586-7228 or alicia.m.miller@noaa.gov.

SUPPLEMENTARY INFORMATION:

Authority for Action

NMFS manages the groundfish fisheries in the exclusive economic zone off Alaska under the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska (GOA) and under the FMP for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI). The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679.

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC promulgates regulations governing the halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, D.C., on March 29, 1979). The IPHC's regulations are subject to approval by the Secretary of State with the concurrence of the Secretary. The Halibut Act, at sections 773c (a) and (b), provides the Secretary with general responsibility to carry out the Convention and the Halibut Act. The Halibut Act, at section 773c(c), also provides the Council with authority to develop regulations that are in addition to, and not in conflict with, approved IPHC regulations. Throughout this preamble the term halibut is used for Pacific halibut.

Background

NMFS proposes regulations to adjust the North Pacific Observer Program (Observer Program) fee percentage. This proposed rule is intended to increase funds available to support observer and EM deployment in the partial coverage category of the Observer Program and increase the likelihood of meeting monitoring objectives. The following sections describe the Observer Program, the landings subject to the observer fee, and the need for this action.

Observer Program

Fishery managers use information collected by observers or electronic monitoring (EM) systems to monitor fishing quotas, manage catch and bycatch, and document fishery interactions with protected resources, such as marine mammals and seabirds. Scientists use this information for fish stock assessments and marine ecosystem research. Over the past several decades, NMFS has required the deployment of observers onboard vessels and at shoreside and other fish processors to ensure high-quality fishery data necessary for the conservation and management of fisheries. Section 3.2 of the Analysis detail the use of data gathered through observer and EM systems.

In 2012, the Observer Program was extensively restructured to add a funding and deployment system for observer coverage and amend existing observer coverage requirements for vessels and processing plants (77 FR 70061, November 21, 2012). This funding and deployment system allows NMFS to determine when and where to deploy observers according to management and conservation needs, with funds provided through a system of fees. In 2017, NMFS implemented regulations to integrate electronic monitoring (EM) into the Observer Program (82 FR 36991, August 8, 2017). Regulations

at 50 CFR 679 subpart E implementing the Observer Program, require the deployment of NMFS-certified observers or EM.

The Observer Program includes two observer coverage categories—the partial coverage category and the full coverage category (defined in regulation at § 679.51). All groundfish and halibut vessels and fish processors subject to observer coverage are included in one of these two categories. Throughout this proposed rule, the term “processor” refers to shoreside processors, stationary floating processors, and catcher/processors.

The partial coverage category includes vessels and processors that are not required to have an observer or EM at all times and the full coverage category includes vessels and processors required to have all of their fishing and processing activity observed. Vessels and processors in the full coverage category arrange and pay for observer services directly from a permitted observer provider, in what is commonly known as a “pay-as-you-go” deployment method. Observer coverage and EM for the partial coverage category are funded through a system of fees based on the ex-vessel value of groundfish and Pacific halibut. This fee is authorized under section 313 of the Magnuson-Stevens Act.

Section 313 of the Magnuson-Stevens Act (16 U.S.C. 1862) authorizes the Council, in consultation with NMFS, to prepare a fishery research plan that includes stationing observers to collect data necessary for the conservation, management, and scientific understanding of the fisheries under the Council’s jurisdiction, including the halibut fishery. Section 313(d) of the Magnuson-Stevens Act authorized creation of the North Pacific Fishery Observer Fund within the U.S. Treasury. NMFS uses its authority

under section 313 of the Magnuson-Steven Act to fund deploying observers and EM on vessels and processors in the partial coverage category. Section 313 of the Magnuson-Stevens Act authorizes NMFS to assess a fee up to 2 percent of the unprocessed ex-vessel value of the fisheries under the jurisdiction of the Council, including the halibut fishery.

Each year since the Observer Program was restructured, NMFS develops an Annual Deployment Plan (ADP) to describe how observers and EM will be deployed in the partial coverage category for the upcoming calendar year and prepares an annual report. The annual report evaluates the performance of observer deployment in the full coverage category according to the regulatory coverage requirements and performance in partial coverage category according to the prior year's ADP implementation. NMFS and the Council created the ADP process to provide flexibility in the deployment of observers, specifically in the partial coverage category, and EM to gather reliable data for estimation of catch in the groundfish and halibut fisheries off Alaska. The ADP process ensures that the best available information is used to evaluate deployment, including scientific review and Council input, and to annually determine deployment methods. During the development of the ADP, NMFS consults with the Council to determine how to apportion fee revenues between observer and EM deployment and to specify selection rates for each. Observer and EM selection rates for a given year are dependent on the available budget generated from the observer fee and supplemental funds and the decisions about how to apportion the fees to different selection pools and the anticipated fishing effort in each selection pool. Additional information about the Observer Program is available in Section 3 of the Analysis.

Landings Subject to the Fee

Since January 1, 2013, an observer fee equal to 1.25 percent of the fishery ex-vessel value has been assessed on all landings accruing against a Federal total allowable catch (TAC) for groundfish or a commercial halibut quota made by vessels that are subject to Federal regulations and not included in the full coverage category. A fee is only assessed on landings of groundfish from vessels designated on a Federal Fisheries Permit or from vessels landing individual fishing quota (IFQ) or Western Alaska community development quota (CDQ) halibut or IFQ sablefish. Within the subset of vessels subject to the observer fee, only landings accruing against an IFQ allocation or a Federal TAC for groundfish are included in the fee assessment. Regulations at § 679.55(c) describe which landings are subject to the observer fee assessment.

The intent of the Council and NMFS is for vessel owners to split the fee liability 50-50 with the processor or registered buyer. While the intent is that vessels and processors are each responsible for their portion of the ex-vessel value fee, the owner of a processor is responsible for collecting the fee, including the vessel's portion of the fee, at the time of landing and remitting the full fee amount to NMFS.

Annually, NMFS publishes in the Federal Register, a notice of the standard ex-vessel prices for groundfish and halibut for the calculation of the observer fee under the Observer Program (84 FR 68409, December 16, 2019). Each year the notice provides information to vessel owners, processors, registered buyers, and other participants about the standard ex-vessel prices that will be used to calculate the observer fee assessed against landings of groundfish and halibut. NMFS sends invoices to processors and registered buyers subject to the fee by January 15 of each year for the previous year's fee liabilities. Fees are due to NMFS on or before February 15.

Need for this Action

The annual process of establishing observer coverage and EM selection rates in the partial coverage category using the Observer Program Annual Report and Draft ADP is a well-designed and flexible process. This annual process produces a statistically reliable sampling plan for the collection of scientifically robust data at any level of observer coverage and allows for annual consideration of policy-driven monitoring objectives identified through the Council process (Section 3.3 of the Analysis). Due to higher than expected observer deployment costs since 2013, and diminishing availability of supplemental Federal funding and declining fee revenues, additional funding is necessary to deploy observers and EM at coverage rates adequate to meet the Council's and NMFS' monitoring objectives in future years. In October 2019, the Council unanimously recommended to increase the observer fee to 1.65 percent. Additional information about funding and coverage rates afforded since 2013 is included in Section 3.4 of the Analysis for this action.

Proposed Action

This action would increase the observer fee specified at § 679.55(f) from 1.25 percent to 1.65 percent of the ex-vessel value of landings subject to the fee. A 1.65 percent fee would increase fee revenues to support observer and EM deployment at rates that would be more likely to meet the Council's and NMFS' monitoring objectives than the revenues from the current 1.25 percent fee. As described in Section 3.2 of this Analysis, Observer and EM data are an integral component of management for all fisheries in the partial coverage category. Data collected by observers is fundamental to

fisheries management off Alaska and the Observer Program is critical to collecting important information for NMFS, the Council, and stakeholders.

In recommending this adjustment to the observer fee, the Council recognized the diminishing availability of supplemental Federal funding and fee revenues as well as higher than expected costs for observer and EM deployment since implementation of the Observer Program on January 1, 2013. As described in Section 4.5 of the Analysis, NMFS can manage the fisheries at low levels of observer coverage, but in an uncertain climate with substantive changes in fishery catch limits in recent years, the Council and NMFS recognize the importance of fisheries monitoring and maintaining the Observer Program.

The monitoring objectives for the Observer Program include maintaining and improving data quality and utility for scientific and management purposes while fairly distributing the burden of monitoring and minimizing the impacts to vessel operations (see Section 3.3 of the Analysis for additional detail). According to Section 4.2 of the Analysis, a 1.65 percent fee would have resulted in \$4.4 to \$5.8 million in fee revenues annually (2013 through 2018) compared to the estimated \$3.3 to \$4.4 million in fee revenues generated by the 1.25 percent fee. Section 4.2 of the Analysis notes that it is difficult to reliably project the amount of revenue that will be provided from a fee on an annual basis due to uncertainty about future TAC or halibut quota limits, ex-vessel prices, or fishing effort. However, Section 5.6 of the Analysis describes that increasing the fee increases the likelihood that monitoring objectives can continue to be met. Sections 4.2.1 and Appendix D provide additional detail on the range of potential revenues, and possible gaps in the types of data that may occur at various levels of fees.

The Council considered two alternatives that would increase the observer fee from the current 1.25 percent up to 2 percent (the maximum fee authorized by section 313 of the Magnuson-Stevens Act). The two alternatives differed in how the fee would be distributed across the fisheries (i.e., trawl, hook-and-line, pot, and jig gear). Alternative 2 would have increased the fee equally on all fisheries. Alternative 3 would have allowed different fee percentages to be established for the different fisheries subject to the observer fee. The Council recommended and NMFS proposes increasing the fee equally on all fisheries (Alternative 2) to maintain consistency with the current method for assessing costs on fishery participants, because it was not clear what specific data collection need would be better met by having differential fees among fisheries, and the lack of a clear rationale to establish a greater fee on one fishery than another.

The Council recommended and NMFS proposes an observer fee of 1.65 percent to balance the concerns raised by the affected industry about the costs of operation if the fee were to increase to the maximum of 2 percent, or an amount close to 2 percent, with the need to increase fee revenues to meet monitoring objectives. Public testimony at the Council noted that increasing fees up to the maximum amount would be likely to impose substantial additional costs during a period of decreasing revenues in various fisheries (e.g., halibut). Section 5.6 of the Analysis notes that fees lower than 1.65 percent would be unlikely to provide the revenue to meet the Council's monitoring objectives. The Council's recommendation and NMFS' proposal for a 1.65 percent fee would balance concerns about increased costs with the need to increase revenue in order to meet monitoring objectives.

The proposed fee adjustment would not modify other aspects of the fee collection process, the responsibility to pay the fee, the ADP process, or other aspects of the Observer Program regulations and management. Adjusting the observer fee to 1.65 percent would improve the fiscal stability of an industry-funded monitoring program and balances the need to increase funding for observer and EM deployment with the economic burden imposed on affected fishery participants. Along with adjusting the observer fee, the Council supports continuing efforts to further explore efficiencies that may provide for more cost effective or efficient deployment of observers with existing funding, while still meeting the needs for reliable and unbiased data.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska (GOA) and the FMP for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI), other provisions of the Magnuson-Stevens Fishery and Conservation Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

This proposed rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

Regulatory Impact Review (RIR)

An RIR was prepared to examine the costs and benefits of the alternatives analyzed. The RIR considers quantitative and qualitative measures. A copy of this

analysis is available from NMFS (see **ADDRESSES**). The Council recommended and NMFS proposes these regulations based on those measures that maximize net benefits to the Nation. Specific aspects of the RIR are discussed below in the initial regulatory flexibility analysis (IRFA) section.

Initial Regulatory Flexibility Analysis (IRFA)

This IRFA was prepared for this proposed rule, as required by section 603 of the Regulatory Flexibility Act (RFA). This IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble.

Number and Description of Small Entities Regulated by This Proposed Rule

This proposed rule directly regulates the owners (permit holders) of fish processors required to pay the observer fee. A shoreside processor or stationary floating processor primarily involved in seafood processing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual employment, counting all individuals employed on a full-time, part-time, or other basis, not in excess of 750 employees for all its affiliated operations worldwide. Reliable information is not available on ownership affiliations between individual processing operations or employment for the fish processors directly regulated by this proposed rule. Therefore, NMFS assumes that all of the processors directly regulated by this action could be small. Section 5.7 of the Analysis identifies 50 shorebased processors and 14 floating processors that received partial coverage deliveries

subject to the observer fee in 2018 (the most recent year of available ownership and permit data).

The proposed rule also directly regulates the owners (permit holders) of catcher/processors required to pay the observer fee, and directly affects the owners (permit holders) of catcher vessels that harvest fish subject to the observer fee. Under the RFA, businesses classified as primarily engaged in commercial fishing are considered small entities if they have combined annual gross receipts (revenues) not in excess of \$11.0 million for all affiliated operations worldwide, regardless of the type of fishing operation – i.e., finfish or shellfish (81 FR 4469; January 26, 2016). If a vessel has a known affiliation with other vessels – through a business ownership or through a cooperative – the vessel’s gross receipts are measured against the small entity threshold based on the total gross revenues of all affiliated vessels. Because public information on business ownership is incomplete, this analysis only considers affiliation in the form of membership in a fishing cooperative. Gross revenues for catcher vessels that participated in fishing cooperatives under the Central Gulf of Alaska Rockfish Program, the Bering Sea American Fisheries Act pollock fishery, or the Crab Rationalization Program were combined for purposes of identifying small entities directly affected by this proposed rule.

In 2018, 997 vessels participated in fisheries in the partial coverage category. Section 4.5.3.2 in the EA notes that the number of catcher/processors eligible for partial coverage when fishing off Alaska is currently estimated to be between six and 10. Of the total of 997 vessels in partial coverage in 2018, 982 are classified as small entities (four were catcher/processors and the rest catcher vessels). Of those 982 vessels, by gear type, 827

vessels fished hook-and-line gear, 87 fished pot gear, 30 fished trawl gear, and 22 fished jig gear.

Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

The Council and NMFS considered three alternatives. Alternative 1, the no action Alternative, would maintain the current level of the fee at 1.25 percent of the ex-vessel value of the fish landings subject to the fee. Alternative 2 would raise the fee up to 2 percent, equally across all fisheries included in the program (i.e., gear types). Alternative 3 would raise the fee up to 2 percent, but be implemented differentially across the fisheries included in the program (i.e., gear types). This proposed rule would increase the observer fee to 1.65 percent of ex-vessel value for all landings subject to the observer fee. The status quo and some of the fee levels considered under Alternatives 2 and 3 would have implemented a fee percentage lower than the proposed rule for some or all directed regulated or directly affected small entities. However, the Council recommendation to increase the observer fee is necessary to increase fee revenues to deploy observers and electronic monitoring at coverage rates adequate to meet the Council's and NMFS' monitoring objectives in future years. In addition, the Council recommended and NMFS agrees that a single observer fee percentage should continue to be applied equally to the ex-vessel value of all of the landed catch subject to the observer fee.

Duplicate, Overlapping, or Conflicting Federal Rules

No duplication, overlap, or conflict between this proposed action and existing Federal rules has been identified.

Recordkeeping, Reporting, and Other Compliance Requirements

This proposed rule does not contain recordkeeping, reporting, or other compliance requirements.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: March 3, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

**PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF
ALASKA**

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108-447;
Pub. L. 111-281.

2. In § 679.55, revise paragraph (f) to read as follows:

§ 679.55 Observer fees.

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(f) *Observer fee percentage.* The observer fee percentage is 1.25 percent through December 31, 2020. Beginning January 1, 2021, the observer fee percentage is 1.65 percent.

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